

In re) Fair Hearing No. 20,399
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Appeal of)

The petitioner appeals a decision of the Department for Children and Families, Health Access Eligibility Unit (HEAU) finding her ineligible for long-term care Medicaid benefits prior to February 1, 2006. The issue is whether the petitioner's income and resources exceeded the program maximums prior to that date. The pertinent facts are not in dispute.

1. The petitioner, through her family, filed an application for Medicaid in January 2006. It appears she had entered a nursing home in or prior to December 2005, where she continues to reside. Following a delay in which the petitioner's family was providing the Department with financial information regarding the petitioner's circumstances (see *infra*), the Department notified the petitioner on May 11, 2006 that her application was granted effective February 1, 2006.

2. The petitioner appealed this decision on June 28, 2006 claiming that she should have been determined eligible for Medicaid for December 2005 and January 2006 as well, and that she shouldn't be subject to a "patient share" from her income until May 2006. The matter was continued for several months to allow the parties to submit written argument. The petitioner submitted her argument in a letter dated December 14, 2006.¹ The Department submitted its response on January 19, 2007.

3. There is no dispute regarding the amount of the petitioner's income during this period. In its notice dated May 11, 2006 the Department determined that the petitioner has earned income of \$595.26 a month and unearned income of \$2,273.50 a month. There is also no dispute that the Department has allowed the petitioner the appropriate deductions for personal needs and health insurance premiums. The petitioner does not dispute that her ongoing "patient share" for her nursing home expenses, at least as of May 2006, is \$2,555.76.

¹ In his letter dated December 14, 2006, the petitioner's attorney raised for the first time whether the petitioner's eligibility should be retroactive to September 2005. However, inasmuch as there was no prior request for eligibility during this period, and no separate argument submitted pertinent to those months, this recommendation will confine itself to the period noticed in the petitioner's appeal, i.e., December 2005 and January 2006.

4. The petitioner argues, however, that she should not have been subject to a patient share prior to May 2006 because of the delay from the previous January in processing her Medicaid application. According to her attorney, the family used her income during this period to pay expenses other than the petitioner's nursing home charges. However, the information submitted by the petitioner regarding her income and resources during this period, and the Department's treatment of it, do not support this argument.

5. The documentation shows that the petitioner's family was depositing the petitioner's income into bank accounts that were used, in part (see *infra*), to pay the petitioner's personal expenses. In determining that the petitioner was resource eligible for Medicaid between February and May 2006, the Department subtracted the amount of the petitioner's patient share to the nursing home from her reported bank balances. Therefore, the petitioner is, in essence, arguing that her personal share should be subtracted from *both* her income and resources during this period. Besides being plainly contrary to the regulations, nothing in the materials submitted by the petitioner's family indicates that there was not sufficient money in the petitioner's accounts between

February and May 2006 to pay her nursing home bill *and* all her other necessary personal and medical needs.

6. If, as the family now appears to be claiming, the petitioner's nursing home bill from February to May was unpaid, it is because the family spent the money on items the Department later determined were unessential for the petitioner's medical needs. However, there is no allegation that the petitioner's family received any false or misleading advice from the Department during this period as to how they should have spent the petitioner's income and resources. There is also no claim or evidence that the delay in processing the petitioner's Medicaid application was solely, or even primarily, attributable to the Department. Thus, a naked allegation that the family unwittingly spent the petitioner's money on items other than her nursing home bill during this time does not, in and of itself, provide any factual or legal basis to find that the petitioner should not be subject to the income and resource provisions regarding eligibility.

7. All the petitioner's arguments are further undercut by the additional fact that the record shows unexplained "gifts" of money from the petitioner's accounts to two family members in September and October 2005 that total \$11,200.

The Department did not invoke the penalty provisions in the regulations (see *infra*) for transfers of resources because it determined that the petitioner was ineligible based on the amount of her other resources. However, if the petitioner were to prevail in her other arguments, this would appear to be an additional hurdle to eligibility.

ORDER

The decision of the Department is affirmed.

REASONS

For Medicaid, the maximum in allowable resources for an individual in long-term care is \$2,000. W.A.M. § P-2400C(1). There is no question that bank accounts are considered "liquid resources". § M231.2. There is no dispute in this matter that until February 1, 2006, the petitioner had bank accounts, even after deducting for her nursing home expenses, that totaled more than this amount.

The essence of the petitioner's argument appears to be that the delay in processing her Medicaid application led her family to unwittingly spend her money while the application was pending in ways that left them unable to pay the nursing home. As noted above, however, this allegation does not seem to be factually supported by the financial records submitted

by the family. Even if it was, however, there has been no claim or showing that the Department is in any way at fault, either in the time it took to process the petitioner's application, or in any information it might or might not have given to the petitioner's family during the application process. But, even if the family could establish some sort of "estoppel" argument in this regard against the Department, the petitioner would still have to account for the unexplained "gifts" she made to family members shortly before she applied for Medicaid.

Based on the written evidence and legal arguments submitted by the petitioner there is no basis to conclude that the Department's decision in this matter is not fully in accord with its regulations. Thus, the Board is bound to uphold that decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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